

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2021-93-E**

<p>Dominion Energy South Carolina, Incorporated's Request for Like Facility Determinations Pursuant to S.C. Code Ann. §58-33-110(1) and Waiver of Certain Requirements of Commission Order No. 2007-626</p>

**RESPONSE IN OPPOSITION TO JOINT
MOTION TO AMEND PROCEDURAL
SCHEDULE**

By motion submitted October 12, 2021, the Sierra Club, South Carolina Coastal Conservation League, the Southern Alliance for Clean Energy, and the Carolinas Clean Energy Business Association (collectively the “Intervenors”) requested that the Commission issue an order amending and delaying the current procedural schedule and directing Dominion Energy South Carolina, Inc. (“DESC”) to refrain from its proposed RFP.

The request should be denied because it seeks to delay the resolution of this matter far beyond what reason, sound regulatory policy, the needs of customers and the electric system, and the siting statute can support. Granting the Intervenors’ motion could seriously jeopardize DESC’s ability to operate its electric system reliably and efficiently and would needlessly injure the interest of customers.

In addition, the Joint Motion unilaterally seeks to abrogate a scheduling order that the Commission issued *at the request of the Intervenors* and with the consent of DESC on July 29, 2021. The request itself is fundamentally unfair and contrary to positions taken by the Intervenors in requesting the scheduling order that the Commission granted.

The Verified Prefiled Direct Testimony of Andrew Walker

The direct testimony of Mr. Walker was prefiled in this docket *in verified form* on October 18, 2021.¹ Mr. Walker's direct testimony provides a detailed explanation of the nature and basis of the Company's requests in this matter, the need for the replacement units, the risk of delaying their installation, and the immediate benefits that they will provide customers and the system.

DESC urges the Commission to carefully review Mr. Walker prefiled direct testimony in considering these matters. It is sworn testimony and the Company incorporates it into this response by reference.

Need for the Units

As explained in Mr. Walker's testimony, the Company is ready, willing and able to retire thirteen aging, inefficient combustion turbines and one associated steam turbine. Walker Testimony 2:18-21-3:1-5. DESC will replace ten of the retired combustion turbines and the one associate gas-fired system unit with five modern aeroderivative combustion turbines. *Id.* at 3:1-5. These replacement units will provide the same critical reliability functions to the electrical system as the units that they are replacing, but with greater reliability, efficiency, and operational flexibility and will lower fuel costs, maintenance requirements and air emissions. *Id.* at 3:1-9.

With minor exceptions, the units to be retired or replaced are based on 1960's era technology, are expensive to run, have poor fuel efficiency by current standards, lack modern operating and emissions controls, are difficult and costly to maintain, and pose increasing reliability and maintenance risks to the system. *Id.* at 27:3-28:7. Three of these combustion turbines have failed and are out of service today. *Id.* at 7:17-18. Because of their age, technology and condition, the combustion turbines as a group are not capable of supporting the current operating

¹ <https://dms.psc.sc.gov/Attachments/Matter/9ea16133-c8bd-43ee-b920-2db235548e0d>

needs of the system, particularly considering the level of intermittent solar generation which is likely increase. Walker Testimony 7:8-20-8:1-7. There are real costs to customers in delaying a resolution of this matter. *Id.* at 9:15.

The Replacement Plan

As replacements for ten of the units to be retired, the Company is prepared to install five modern combustion turbines at the same sites where the ten units are now located. *Id.* at 3: 1-13. The replacement units will incorporate state-of-the-art operating and emission controls and fuel efficiency improvements. *Id.* at 32:6-11. The replacement units will be able to meet the needs of the current and future electrical system efficiently, reliably, cost effectively and with lower air emissions. *Id.*

The replacement units have been sized as closely as practical to match the capacity of the units they are replacing given the sizes of available units on the market. *Id.* at 29: 7-13. The replacements will be located on the same sites, and use the transmission interconnections, natural gas assets and back up fuel capabilities that have served the units being replaced. Walker Testimony 33:21-32:1-4.

Schedule and Cost Risk

Through RFPs, the Company has obtained favorable manufacturing and construction commitments for the replacement units. *Id.* at 13:1-4. But even under the favorable schedule commitments in hand today, it will take more than three years to complete the replacements. *Id.* That time required reflects the necessary care and complexity of fabricating, testing, transporting, delivering, installing and connecting units of this type.

Delaying these proceedings as Intervenors request puts the current delivery and construction schedule at serious risk. *Id.* at 13:5-7. Under the best of circumstances, combustion

turbine units are long-lead time items. And circumstances today are challenging, not ideal, and are likely to become increasingly challenging going forward. *Id.* at 13: 10-20. The global demand for modern combustion turbines is intense. These units are a primary resource globally for responding to the intermittency of solar and wind generation, and maintaining grid reliability in the face of increasingly extreme weather events, the retirement of other types of fossil units and the movement toward the increased electrification of the transportation and manufacturing sectors of the economy. Walker Testimony 17:16-21-18:1-2.

Therefore, losing the current schedule commitments, and putting DESC at the back of the manufacturing queue for these units when the Intervenor's proposed schedule is complete, could delay completion of the replacements by many years. The resulting delay could trigger significant cost and reliability risks in the intervening years and cause unnecessary cost increases for customers when the units in fact are built. The cost and schedule risk for customers is particularly great at present given current global supply chain issues, inflationary expectations and disruptions in the energy industry. *Id.* at 13:10-20.

The Current Siting Act Request

The Utility Facility Siting and Environmental Protection Act (the "Siting Act") does not require certificates to authorize construction of generating facilities with nameplate capacities less than 75 MW. S.C. Code Ann. § 58-33-20(2)(a). Only two of DESC's five replacement combustion replacement units meet that 75 MW threshold. They are the two 117 MW units to be located at Urquhart Station.

The Siting Act also exempts from certification requirements units that are the "replacement of an existing facility with a like facility, as determined by the Commission." S.C. Code Ann. § 58-33-110(1). The Urquhart units replace existing gas generation capacity with similarly-sized

gas-fired units intended to perform the generation functions that the units being retired are currently performing and at the same physical locations.

On March 10, 2021, DESC filed a request under Section 110(1) of the Siting Act for the Commission to issue a determination that the two Urquhart units are like gas-for-gas replacements of existing generation assets and represent like facility replacements. There is no factual dispute nor is there any reasonable basis for a factual dispute concerning the fuel type, nature, function, purpose, size or location of these units or the units that they are replacing, or of the legal standards that apply to such determinations. The Intervenor's motion to have the Commission hear this request as a matter of law implies as much.

The Commission's consistent, long-standing and entirely logical precedent holds that the like-facility requirement is met where "replacement facilities are similar in function and purpose to the presently existing facilities." See Order No. 2014-118. The Commission has ruled that Duke Energy Carolina's repowering of a three-unit coal plant to burn only natural gas and the construction of new gas infrastructure at the site for that purpose was a like-facilities replacement not requiring a Siting Act certificate. Order No. 2014-963 at page 2. The Commission has ruled that replacing wooden transmission structures with steel structures and higher capacity lines, while adding an entirely new substation, was a like facility replacement. Order No. 2021-438. The Commission approved similar project as like-facilities replacements by Order No. 2018-33 and Order No. 2014-633.

The Timing of Like-Facility Determinations

The structure and language of the Siting Act shows that it intends for like-facilities determinations to function as simple, non-contested case alternatives to full Siting Act certificate proceedings. The Siting Act includes no provisions allowing or supporting contested-case,

evidentiary hearings on requests for determinations of like-kind status under Section 110(1). The Siting Act envisions that such proceedings can be conducted efficiently and expeditiously on a paper record.

Applications for full Siting Act certifications are filed under Section 120 and contested-case, evidentiary hearings are mandated for those application. See S.C. Code Ann. § 58-33-130(1). Section 130 of the Siting Act sets a 90-day deadline after the application date for hearings to be conducted. It mandates that the Commission “shall conclude the proceedings as expeditiously as practicable.” S.C. Code Ann. § 58-33-130(1). By long-standing practice, the Commission has interpreted this statute as requiring the order in a Siting Act certification proceeding to be issued within 120 days of the filing of the application.

In this proceeding, even if the Commission adheres to the current schedule, and denies the Intervenor’s request for further delay, the hearing on the Company’s like-facility request cannot be held before December 1, 2021, which is 264 days after the filing of the request. If the Commission were to grant the Intervenor’s Joint Motion, then briefing of the “legal issues” Intervenor assert are in dispute here (and it is entirely unclear what those are) would not be completed until December 10, 2021. Oral argument and issuance of an order would follow. Only then, most probably sometime in early 2022, would the Commission decide *whether or not to schedule a hearing* on the like-facility determination request.

Therefore, if the Joint Motion is granted, it is likely that the parties would not know whether a hearing will take place on this case matter until nearly a year after the application was filed. In a full Siting Act certificate proceeding, the hearing must take place within 90 days of the application. Under the Joint Motion’s schedule, it could require well over a year to reach an order

on the merits, not the 120 days allowed in a full Siting Act certificate proceeding is allowed. This result is clearly inconsistent with the intent of the statute.

In the meantime, customers will bear the additional fuel costs, maintenance expense, reliability risks and operating the existing units, as well as any additional expense and risks caused by losing schedule and cost commitments for the project.

There Is No Reason to Delay the Filing of Testimony and Scheduling of the Hearing to Consider the “Legal” Issues

Intervenors’ ask to the Commission to adopt a schedule that delays filing of testimony and scheduling of a hearing until certain “legal” issues have been heard and decided in late 2021 or early 2022. There is no reason for this delay. In established Commission practice, legal issues are most often argued post-hearing, after the evidence is closed and based on an administrative record that informs the legal decision. In this case, the prefiling of testimony will sharpen the dispositive issues (if in fact there are any); clarify the position of the Parties and provide context for any legal argument that Parties intend to make. If Intervenors see a unique reason in this case to raise specific legal issues before hearing, they can do so by motion. But neither testimony nor the hearing should be delayed on that account. The filing of testimony and the consideration of legal issues can take place in parallel or after the hearing as is the case in other proceedings.

DESC Should Be Encouraged to Proceed with Its RFP

In its request of March 10, 2021, DESC asked the Commission to acknowledge that under Order No. 2007-626 and Order No. 2018-804 the Company is not required to conduct an RFP for the replacement units because they do not represent capacity being added to the system to satisfy “new peaking generation requirements” as specified by those orders. Order No. 2007-626 provides that “RFPs will *only* be mandatory for *new* peaking generation *requirements*.” See, Order No. 2007-626 at page 2 (emphasis supplied). Similarly, Order No. 2018-804 recognized a settlement

requiring an RFP only for “a new generating resource.” See, Order No. 2018-804 at p. 32 (emphasis supplied).

The replacement units will meet existing generation requirements with similar units that are more reliable, more efficient and more capable than the ones that are currently meeting those requirements. They are not proposed to meet new resource requirements. In making its request, the Company also relied on Commission Order No. 2008-469 at pages 4-5, in which the Commission waived the mandatory RFP requirement for the replacement of four aging turbines at the Company’s Burton and Faber Place substations, with a combined summer capacity of 38 MW, with two relatively new turbines at Hagood Station, with a combined summer capacity of 34 MW, as a “beneficial, cost effective and fuel-efficient proposal that is consistent with the considerations that led this Commission to issue the RFP Order.”

As indicated in Mr. Walker’s testimony, the Company nonetheless has decided to *voluntarily* proceed with an all-source RFP in parallel with the current request. It has done so because of the delays that are being proposed in these proceeding and the pressing need for the replacement units to protect customers’ interests and the reliability of the system. Walker Testimony 6:19-21-7:1-6. Given the evolving procedural timetable in this docket, DESC determined that it would not be consistent with customers’ interest and its reliability commitments as a utility to wait until a Commission order is issued after hearing in this docket to see if an RFP needs to be undertaken. *Id.* at 14:4-16. Instead, DESC at its own initiative, is preparing an all requirements RFP with Guidehouse as its independent evaluator. *Id.* at 14:19-21-15:1-4. Stakeholder input is to be obtained before the RFP is issued. This RFP will allow DESC to respond quickly if the Commission denies its requests for an acknowledgement that no RFP is required here and avoid some of the delay that would result.

As indicated in Mr. Walker's testimony, it is highly unlikely that the RFP will result in a change in the Company's plans. *Id.* at 14: 4-6. Three of the key services provided by the current units, blackstart capacity, voltage support and nuclear safety support, by their nature can only be provided by resources located on or directly connected to DESC's system and within specific regions of that system. In addition, blackstart capacity requires assets that are under the direct control of DESC's system operators. Nuclear safety support requires units connected by direct transmission circuits to the units supported. *Id.* at 23:8-20-24:1-2. Battery storage cannot supply blackstart and nuclear safety because of energy limitations (blackstart and nuclear safety support can require assets that can provide power for days). Black start and nuclear safety service would also require keeping battery storage fully charged and on line at all times. Walker Testimony 20-23. Doing so would be extraordinarily expensive and wasteful of the potential use of battery assets which have greatest value in storing and discharging energy on a daily cycle. Furthermore, compared to modern combustion turbines, no other units or combination of units have the same ability to support the efficient integration of solar and battery resources onto the grid. *Id.*

However, as Mr. Walker states in his testimony, if the Company's plan changes because of the RFP, it will bring those changes before the Commission in the form of an amended like-facilities determination or application for a Siting Act certification, if necessary. Walker Testimony 14: 4-16. The Company does not in any way waive or abandon its position that no RFP is required here or that the RFP requirement should be waived if necessary. There is no reason that the parties are prejudiced in responding to the Company's request regarding the RFP requirement. The fact that the Company is also pursuing a purely voluntary RFP does not create any additional burden or prejudice.

In effect, the Intervenors request the Commission to issue an injunction against the Company's RFP. The Company notes that the Commission is an entity of limited power. *City of Camden v. Public Service Com'n of South Carolina*, 283 S.C. 380 (1984) (holding "[t]he Public Service Commission is a governmental body of limited power and jurisdiction, and has only such powers as are conferred upon it either expressly or by reasonably necessary implication by the General Assembly"); *Piedmont & Northern Ry. Co. v Scott*, 202 SC 207, 357 (1943).

The Company is not aware of any statutory grant allowing the commission to enjoin utilities from issuing RFPs. Accordingly, because no such power has been conferred upon the Commission, the Company respectfully asserts that this action would exceed the limited authority of the Commission.

Conclusion

Given the potential costs to customers and reliability risks of delaying a resolution of this proceeding, DESC requests that the Commission proceed to a determination without delay. The Commission's timely grant of the Company's requests in this docket would benefit both customers and the electrical system. For these reasons, DESC respectfully requests that the Commission deny the Joint Motion of the Intervenors.

Respectfully submitted,

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